

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/16/2022

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: UNITED STATES OF AMERICA
: - v. -
: LUIS TORIBIO,
: Defendant.
: ----- x

: CONSENT PRELIMINARY ORDER
OF FORFEITURE/
MONEY JUDGMENT
22 Cr. 246 (GHW)

WHEREAS, on or about April 29, 2022, LUIS TORIBIO (the “Defendant”), was charged in a one-count Information, 22 Cr. GHW (246) (the “Information”), with bank fraud, in violation of Title 18, United States Code, Section 1344 (Count One);

WHEREAS, the Information included a forfeiture allegation as to Count One of the Information, seeking forfeiture to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A) any and all property constituting or derived from, proceeds the Defendant obtained directly or indirectly, as a result of the commission of the offense charged in Count One of the Information, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of the offense charged in Count One of the Information and the following specific property:

- a. Any and all funds seized on or about September 9, 2020, from Capital One Bank account 7528402644, held by Conciliation USA Inc. (the “Conciliation Account”);
- b. Any and all funds seized on or about September 9, 2020, from Kearny Bank account 294401377, held by TRM Multiservices LLC (the “TRM Account”).

WHEREAS, on January 8, 2021, the Government a Verified Civil Complaint for Forfeiture, 21 Cv. 174 (AT) (the “Civil Action”) seeking the forfeiture of the following funds seized from the Conciliation Account and the TRM Account:

- a. \$136,096.57 in United States currency formerly on deposit in the Conciliation Account; and
- b. \$285,874.95 in United States currency formerly on deposit in the TRM Account;

(a. and b., collectively, the Defendants-*in-rem*);

WHEREAS, on or about April 29, 2022, the Defendant pled guilty to Count One of the Information, pursuant to a plea agreement with the Government, wherein the Defendant admitted the forfeiture allegation with respect to Count One of the Information and agreed to forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A),¹ (i) \$7,684,416.96 in United States currency, representing proceeds traceable to the commission of the offense charged in Count One of the Information; and (ii) consented to the forfeiture of the Defendants-*in-rem* in the Civil Action and to further withdraw any claims asserted in the Civil Action to the Defendants-*in-rem*;

WHEREAS, the Defendant consents to the entry of a money judgment in the amount of \$7,684,416.96 in United States currency, pursuant to Title 18, United States Code, Section 982(a)(2)(A), representing the amount of proceeds traceable to the offense charged in Count One of the Information that the Defendant personally obtained; and

WHEREAS, the Defendant admits that, as a result of acts and/or omissions of the Defendant, the proceeds traceable to the offense charged in Count One of the Information that the Defendant personally obtained, with the exception of the Defendants-*in-rem*, cannot be located upon the exercise of due diligence;

¹ The plea agreement incorrectly cited Title 18, United States Code, Section 982(a)(1).

IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by its attorney Damian Williams, United States Attorney, Assistant United States Attorneys Daniel Nessim and Sheb Swett, of counsel, and the Defendant and his counsel, Arthur D. Middlemiss, Esq., and Anthony Matthew Capozzolo, Esq., that:

1. As a result of the offense charged in Count One of the Information, to which the Defendant pled guilty, a money judgment in the amount of \$7,684,416.96 in United States currency (the "Money Judgment"), representing the amount of proceeds traceable to the offense charged in Count One of the Information that the Defendant personally obtained, shall be entered against the Defendant.

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Consent Preliminary Order of Forfeiture/Money Judgment is final as to the Defendant, LUIS TORIBIO and shall be deemed part of the sentence of the Defendant, and shall be included in the judgment of conviction therewith.

3. In the event Defendant makes a payment to the Government in the amount of \$90,000 within one year of the entry of judgment (the "Payment"), the Government will accept the Payment in full satisfaction of the Money Judgment provided all right, title and interest in the Defendants-*in-rem* is forfeited to the Government in the Civil Action.

4. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable to the United States Customs and Border Protection, and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Money Laundering and Transnational Criminal Enterprises Unit, One St. Andrew's Plaza, New York, New York 10007 and shall indicate the Defendant's name and case number.

5. United States Customs and Border Protection shall be authorized to deposit the payment on the Money Judgment into the Treasury Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

6. Pursuant to Title 21, United States Code, Section 853(p), the United States is authorized to seek forfeiture of substitute assets of the Defendant up to the uncollected amount of the Money Judgment.

7. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas.

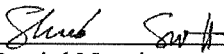
8. The Court shall retain jurisdiction to enforce this Consent Preliminary Order of Forfeiture/Money Judgment, and to amend it as necessary, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

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9. The signature page of this Consent Preliminary Order of Forfeiture/Money Judgment may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

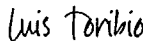
AGREED AND CONSENTED TO:

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York


By: 
Daniel Nessim
Sheb Swett
Assistant United States Attorney
One St. Andrew's Plaza
New York, NY 10007
(212) 637-6522

5/2/2022
DATE

LUIS TORIBIO


By: 
Luis Toribio

8/2/2022
DATE

By: 
Arthur D. Middlemiss, Esq.
Anthony Matthew Capozzolo, Esq.
Attorneys for the Defendant
Lewis Baach Kaufmann Middlemiss PLLC
405 Lexington Avenue
New York, New York 10174
(212) 826-7001/(212) 897-1970

8/2/2022
DATE

SO ORDERED:


HONORABLE GREGORY H. WOODS
UNITED STATES DISTRICT JUDGE

August 16, 2022
DATE